

## Recommended Action Plan and Authorities' Response to the Assessment

Table 11. Guernsey: Recommended Action Plan to Improve Observance of Insurance Core Principles

| Insurance Core Principles   | Recommended Action   |
|---|--|
| ICP 1 - Conditions for effective insurance supervision            | While it is not unreasonable for the GFSC to rely on oversight and professional bodies in other countries to establish and enforce professional standards, it is recommended that the GFSC consider providing clear guidance to accountants, auditors, and actuaries on their respective roles, including professional independence, with respect to regulated entities. |
| ICP 2 - Supervisory objectives                                    | The GFSC is advised to have a clear articulation of its regulatory and supervisory scope as well as objectives in protecting domestic policyholders in respect of recognized insurers.   |
| ICP 15 - Enforcement or sanctions                                 | The GFSC should review its heavy reliance on licensing conditions to take enforcement actions and consider establishing a wider range of enforcement powers, e.g., appointment of judicial managers and receivers.   |
| ICP 16 - Winding-up or exit from the market                       | To safeguard policyholders' interests, the GFSC should consider establishing (a) an explicit legal provision in legislation to ensure that policyholders and claimants are given high priority in the event of insolvency; and (b) regulatory policies on pledging or encumbrance of assets by insurers.   |
| ICP 18 - Risk assessment and management                           | The GFSC is advised to refine the risk matrix to incorporate explicit factors that address insurers' corporate governance and risk management framework.   |
| ICP 19 - Insurance activity                                       | For transparency and consistency, the GFSC is advised to provide guidance on how it assesses the insurance risks of captive insurers seeking approval to have no reinsurance protection.   |
| ICP 20 - Liabilities  | The GFSC is advised to consider including an explicit legal provision in the IBL requiring insurers to maintain adequate technical provisions at all times.  |
| ICP 25 - Consumer Protection                                      | The GFSC is advised to consider effective regulatory cooperation with relevant regulatory authorities to enhance the protection of policyholders located outside of Guernsey.  |
| ICP 26 - Information, disclosure and transparency towards markets | The GFSC should consider how best to implement the public disclosure standards established by the IAIS. <sup>30</sup>  |

<sup>30</sup> Technical Performance and Risks for Nonlife Insurers and Reinsurers, Technical Risks and Performance for Life Insurers and Investment Risks and Performance for Insurers and Reinsurers.

*Authorities' response to the assessment*

|        |   |
|--------|---|
| ICP 1  | The GFSC will consider how best to address the IMF's recommendations.   |
| ICP 2  | Work is under way to provide improved transparency in relation to the protection of domestic policyholders in respect of recognized insurers.   |
| ICP 15 | The GFSC will consider how best to address the IMF's recommendations.   |
| ICP 16 | The GFSC will be working with the relevant parties to improve the legislation with respect to policyholders and claimants in the event of insolvency.   |
| ICP 18 | The GFSC's risk matrix is being reviewed to incorporate the additional risk factors.  |
| ICP 19 | The GFSC will consider how best to address the IMF's recommendations.   |
| ICP 20 | The position on technical provisions will be addressed when the insurance legislation is reviewed following the revision of the IAIS ICPs in October 2011.  |
| ICP 25 | The GFSC will consider how best to address the IMF's recommendations.   |
| ICP 26 | Disclosure rules, which have already been made, come into force in September 2010 and will be reviewed against the revised IAIS ICPs when they are issued in October 2011 to ensure they are both adequate and appropriate. |



## 2.2 Commitment to international standards for tax transparency

| Policy objective                | Key Performance Indicator | Target   | Performance     |
|---------------------------------|---------------------------|----------|-----------------|
| Continuing OECD tier one status | OECD tier one status      | - Tier 1 | - <b>Tier 1</b> |

### Introduction

- The States of Guernsey is committed, as set out in the Fiscal and Economic Plan (published in 2009 and further endorsed in 2010), to meeting the highest international standards of tax transparency. This includes maintaining Guernsey's tier one Organisation for Economic Co-Operation and Development (OECD) status.
- Guernsey's continued OECD tier one status is key to maintaining Guernsey's competitive position and future economic success.
- Since the publication of the last Sustainable Guernsey Report in 2009, the Island has underlined its commitment to tax transparency by initiating a move to full automatic exchange of information; successfully undergoing Phase 1 of the OECD's Peer Review process; and signing a further eight Tax Information Exchange Agreements (TIEAs).
- A TIEA is a bilateral agreement that has been negotiated and signed between two countries to establish formal guidelines for the exchange of information relating to taxes.

### European Union Savings Directive (EUSD)

- Following the signing of bilateral agreements with all 27 EU Member States, Guernsey introduced a Retention Tax regime, with an option for the depositor to elect for exchange of information with their home jurisdiction.
- From July 2011, Guernsey replaced Retention Tax with full automatic exchange of information, under those equivalent measures adopted by Guernsey relating to EUSD.
- This means that information relating to accounts held in Guernsey by individuals resident in an EU Member State will automatically be sent to their home jurisdiction each year.

### OECD Peer Reviews

- The OECD's Global Forum on Transparency and Exchange of Information brings together jurisdictions, including Guernsey, that have made commitments to transparency and exchange of information and have worked together to develop the international standards for transparency and exchange of information in tax matters.
- In September 2009, the Global Forum agreed to initiate a Peer Review Programme to assess how effectively the international standards are being implemented by individual jurisdictions.
- The Peer Review process consists of two phases. Phase 1 assesses the legal and regulatory framework of a jurisdiction against 10 essential elements. Phase 2 of the process focuses on the effectiveness of exchange of information.
- Guernsey underwent its Phase 1 Review during 2010. In January 2011, the Global Forum confirmed that Guernsey had not only followed through its 2002 commitment to observe the OECD principles on transparency and exchange of information for tax purposes, but had also made substantive developments in its exchange of information network.
- The Phase 2 Review is scheduled to take place in 2012.

### OECD Global Forum

- The OECD Global Forum publishes reports on international jurisdictions' progress on implementing internationally agreed tax standards.
- In 2009, Guernsey was classified as having tier one status, the criterion for which requires a minimum of twelve signed TIEAs with other jurisdictions to be place. This is still the case.
- As at 13 May 2011, Guernsey had TIEAs signed with 23 jurisdictions (eight more than at the end of 2009).



## 2.2 Commitment to international standards for tax transparency

## KPI: OECD tier one status

Table 2.2.1: TIEAs signed by Guernsey

| Jurisdiction             | Date signed       | TIEA in force with effect from |
|--------------------------|-------------------|--------------------------------|
| Australia                | 7 October 2009    | 27 July 2010                   |
| Canada                   | 19 January 2011   | Not yet in force               |
| China                    | 27 October 2010   | Not yet in force               |
| Denmark                  | 28 October 2008   | 6 June 2009                    |
| Faroes                   | 28 October 2008   | 21 August 2009                 |
| Finland                  | 28 October 2008   | 5 April 2009                   |
| France                   | 24 March 2009     | 4 October 2010                 |
| Germany                  | 26 March 2009     | Not yet in force               |
| Greece                   | 8 October 2010    | Not yet in force               |
| Greenland                | 28 October 2008   | 25 April 2009                  |
| Iceland                  | 28 October 2008   | 26 November 2009               |
| Indonesia                | 27 April 2011     | Not yet in force               |
| Ireland                  | 26 March 2009     | 10 June 2010                   |
| Netherlands              | 25 April 2008     | 11 April 2009                  |
| New Zealand              | 21 July 2009      | 8 November 2010                |
| Norway                   | 28 October 2008   | 8 October 2009                 |
| Portugal                 | 9 July 2010       | Not yet in force               |
| Romania                  | 17 January 2011   | Not yet in force               |
| San Marino               | 29 September 2010 | 16 March 2011                  |
| South Africa             | 21 February 2011  | Not yet in force               |
| Sweden                   | 28 October 2008   | 23 December 2009               |
| United Kingdom           | 20 January 2009   | 27 November 2009               |
| United States of America | 19 September 2002 | 30 March 2006                  |

Source: External Affairs, Policy Council

Guernsey's Phase 1 peer review report is published at: [http://www.oecd.org/document/42/0,37,46,en\\_2649\\_201185\\_46894058\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/42/0,37,46,en_2649_201185_46894058_1_1_1_1,00.html)  
 More information can be found on the OECD website: [www.oecd.org/tax/progressreport](http://www.oecd.org/tax/progressreport)







## POLICY COUNCIL

THE STATES OF GUERNSEY

### Media Release

DATE: 27 JUNE 2011

FOR IMMEDIATE RELEASE

#### **GUERNSEY SIGNS TAX INFORMATION EXCHANGE AGREEMENT WITH MEXICO**

Chief Minister Lyndon Trott today signed a TIEA with Mexico.

The agreement with Mexico – a member of the G-20 and the OECD and the second-largest economy in Latin America – takes the total number of TIEAs that Guernsey has signed, to date, up to 24. Of these, ten are members of the G-20 group of the world's major advanced and emerging economies.

Deputy Trott said: *"I am delighted to have signed this TIEA with Mexico. It continues to be a priority for Guernsey to sign TIEAs with such prominent countries. This TIEA is also the first such Agreement that Guernsey has signed with a Latin American country".*

*"The text of the TIEA with Mexico recognises that Guernsey already provides for co-operation and the exchange of information in criminal tax matters, and this TIEA demonstrates Guernsey's commitment to the international standards of wider transparency and exchange of information in tax matters."*

Under the terms of a TIEA, Guernsey will, on request, exchange bank and other information relating to both criminal and civil tax matters.

Ends

#### **Note to Media**

Guernsey has previously signed TIEAs with Australia, Canada, China, Denmark, Faroe Islands, Finland, France, Germany, Greece, Greenland, Iceland, Indonesia, Ireland, Netherlands, New Zealand, Norway, Portugal, Romania, San Marino, South Africa, Sweden, United Kingdom and the United States of America.

Issued by: Philip Henderson  
Tel: 01481 717131  
E-mail: [philip.henderson@gov.gg](mailto:philip.henderson@gov.gg)



**AGREEMENT BETWEEN THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA AND THE  
GOVERNMENT OF THE STATES OF GUERNSEY  
FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES**

Whereas Guernsey has long been active in international efforts in the fight against financial and other crimes, including recent efforts involving terrorist financing;

Whereas the Internal Revenue Service of the United States has determined Guernsey's "know your customer" rules to be acceptable for purposes of the Qualified Intermediary regime, which provides simplified withholding and reporting obligations for payments of income from the United States to an account holder through one or more foreign intermediaries;

Whereas the Government of the States of Guernsey and the Government of the United States ("the parties") recognise that present legislation already provides for the exchange of information in criminal tax matters, which under current practice is conducted by the United States through the Department of Justice and by Guernsey through its Attorney General;

Whereas the parties wish to establish the terms and conditions governing the exchange of information relating to taxes;

Now, therefore, the parties have agreed as follows:

**Article 1**

**Scope of the Agreement**

The parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the parties concerning the taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes, or to the investigation or prosecution of criminal matters in relation to such persons.

**Article 2**

**Jurisdiction**

To enable the scope of this Agreement to be implemented, information shall be provided in accordance with this Agreement by the competent authority of the requested party without regard to whether the person to whom the information relates is, or whether the information is held by, a resident of a party. A requested party is not obliged to provide information which is neither held by its authorities nor in the possession of persons who are within its territorial jurisdiction.



**Article 3**  
**Taxes Covered**

1. This Agreement shall apply to the following taxes imposed by the parties:
  - (a) in the case of the United States, all federal taxes,
  - (b) in the case of Guernsey, all insular taxes.
2. This Agreement shall apply also to any identical or substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the parties so agree. The competent authority of each party shall notify the other of changes in laws which may affect the obligations of that party pursuant to this Agreement.
3. This Agreement shall not apply to the extent that an action or proceeding concerning taxes covered by this Agreement is barred by the requesting party's statute of limitations.
4. This Agreement shall not apply to taxes imposed by states, municipalities or other political subdivisions, or possessions of a party.

**Article 4**  
**Definitions**

1. In this Agreement:

"competent authority" means, for the United States, the Secretary of the Treasury or his delegate,

and for Guernsey, the Administrator of Income Tax or his delegate, except that until a date not later than January 1, 2006, Her Majesty's Attorney General for Guernsey may act as the competent authority in respect of criminal tax matters;

"criminal laws" means all criminal laws designated as such under domestic law, irrespective of whether contained in the tax laws, the criminal code or other statutes;

"criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting party;

"information gathering measures" means judicial, regulatory, criminal or administrative procedures enabling a requested party to obtain and provide the information requested;

"information" means any fact, statement, document or record in whatever form;

"person" means a natural person, a company or any other body or group of persons;

"requested party" means the party to this Agreement which is requested to provide or has provided information in response to a request;

“requesting party” means the party to this Agreement submitting a request for or having received information from the requested party;

“resident” means:

- (a) in the case of the United States, any United States citizen and any legal person, partnership, corporation, trust, estate, association, or other entity deriving its status as such from the laws in force in the United States; and
- (b) in the case of Guernsey, any person resident in Guernsey, for the purposes of the Income Tax (Guernsey) Law 1975, as amended.

“tax” means any tax covered by this Agreement.

- 2. For purposes of determining the geographical area within which jurisdiction to compel production of information may be exercised, the term “United States” means the United States of America, including Puerto Rico, the Virgin Islands, Guam, and any other United States possession or territory.

For purposes of determining the geographical area within which jurisdiction to compel production of information may be exercised, the term “Guernsey” means Guernsey, Alderney and Herm.

- 3. Any term not defined in this Agreement, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 10, shall have the meaning which it has under the laws of the parties relating to the taxes which are the subject of this Agreement.

## Article 5

### Exchange of Information Upon Request

- 1. The competent authority of the requested party shall provide upon request by the requesting party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested party if it had occurred in the territory of the requested party. The competent authority of the requesting party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means, except where recourse to such means would give rise to disproportionate difficulty.
- 2. If the information in the possession of the competent authority of the requested party is not sufficient to enable it to comply with the request for information, the requested party shall take all relevant information gathering measures to provide the requesting party with the information requested, notwithstanding that the requested party may not, at that time, need such information for its own tax purposes.

3. If specifically requested by the competent authority of the requesting party, the competent authority of the requested party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each party shall ensure that it has the authority, for the purposes referred to in Article 1 of this Agreement and subject to Article 2 of this Agreement, to obtain and provide, through its competent authority and upon request:
  - (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
  - (b) information regarding the beneficial ownership of companies, partnerships and other persons, including in the case of collective investment funds, information on shares, units and other interests; and in the case of trusts, information on settlors, trustees and beneficiaries, provided that this Agreement does not create an obligation for a party to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds, unless such information can be obtained without giving rise to disproportionate difficulties.
5. Any request for information made by a party shall be framed with the greatest degree of specificity possible. In all cases, such requests shall specify in writing the following:
  - (a) the identity of the taxpayer under examination or investigation;
  - (b) the period of time with respect to which the information is requested;
  - (c) the nature of the information requested and the form in which the requesting party would prefer to receive it;
  - (d) the matter under the requesting party's tax law with respect to which the information is sought;
  - (e) the reasons for believing that the information requested is foreseeably relevant or material to tax administration and enforcement of the requesting party, with respect to the person identified in subparagraph (a) of this paragraph;
  - (f) reasonable grounds for believing that the information requested is present in the requested party or is in the possession of a person within the jurisdiction of the requested party;
  - (g) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
  - (h) a statement that the request conforms to the law and administrative practice of the requesting party and would be obtainable by the requesting party under its laws or in the normal course of administrative practice in similar circumstances, both for its own tax purposes and in response to a valid request from the requested party under this Agreement;

- (i) a statement that the requesting party has pursued all reasonable means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulty.

#### **Article 6**

##### **Tax Investigations Abroad**

1. By reasonable notice given in advance, a party may request that the other party allow officials of the requesting party to enter the territory of the requested party, to the extent permitted under its domestic laws, to interview individuals and examine records with the prior written consent of the individuals concerned. The competent authority of the requesting party shall notify the competent authority of the requested party of the time and place of the intended meeting with the individuals concerned.
2. At the request of the competent authority of the requesting party, the competent authority of the requested party may permit representatives of the competent authority of the requesting party to attend a tax examination in the territory of the requested party.
3. If the request referred to in paragraph 2 is granted, the competent authority of the requested party conducting the examination shall, as soon as possible, notify the competent authority of the requesting party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the requested party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the requested party conducting the examination.

#### **Article 7**

##### **Possibility of Declining a Request**

1. The competent authority of the requested party may decline to assist:
  - (a) where the request is not made in conformity with this Agreement;
  - (b) where the requesting party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
  - (c) where the disclosure of the information requested would be contrary to the public policy of the requested party.
2. This Agreement shall not impose upon a party any obligation:
  - (a) to provide items subject to legal privilege, nor any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 5(4) shall not by reason of that fact alone be treated as such a secret or trade process; or



- (b) to carry out administrative measures at variance with its laws and administrative practices, provided that nothing in this subparagraph shall affect the obligations of a party under Article 5(4).
- 3. A request for information shall not be refused on the ground that the tax liability giving rise to the request is disputed by the taxpayer.
- 4. The requested party shall not be required to obtain and provide information which the requesting party would be unable to obtain in similar circumstances under its own laws for the purpose of the administration/enforcement of its own tax laws or in response to a valid request from the requested party under this Agreement.

#### **Article 8**

##### **Confidentiality**

- 1. All information provided and received by the competent authorities of the parties shall be kept confidential.
- 2. Information provided to the competent authority of a requesting party may not be used for any purpose other than for the purposes stated in Article 1, without the prior express written consent of the requested party.
- 3. Information provided shall be disclosed only to persons or authorities (including judicial, administrative and Congressional oversight authorities) officially concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes or for oversight purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.
- 4. Information provided to a requesting party under this Agreement may not be disclosed to any third party, including an agency or employee of any other government.

#### **Article 9**

##### **Costs**

The requesting party shall reimburse the requested party for all direct costs incurred in providing information pursuant to this Agreement. The respective competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the requested party shall consult with the competent authority of the requesting party if the costs of providing information with respect to a specific request are expected to be significant.

#### **Article 10**

##### **Mutual Agreement Procedure**

Where difficulties or doubts arise between the parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.

**Article 11**  
**Mutual Assistance Procedure**

If both competent authorities of the parties consider it appropriate to do so they may agree to exchange technical know-how, develop new audit techniques, identify new areas of non-compliance, and jointly study non-compliance areas.

**Article 12**  
**Entry into Force**

This Agreement shall enter into force when each party has notified the other of the completion of its necessary internal procedures for entry into force. Upon entry into force, it shall have effect for criminal tax matters forthwith and, in respect of other matters covered in Article 1, on January 1, 2006, or such earlier date as may be agreed in an exchange of letters by the competent authorities.

**Article 13**  
**Termination**

1. This Agreement shall remain in force until terminated by either party.
2. Either party may terminate this Agreement by giving notice of termination in writing. Such termination shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notice of termination by the other party.
3. A party which terminates this Agreement shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

In witness whereof the undersigned being duly authorised in that behalf by the respective parties, have signed the Agreement.

Done at Washington in duplicate this nineteenth day of September, 2002.

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE  
STATES OF GUERNSEY:





SIC 2CL)

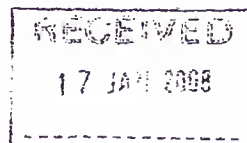


LARGE AND MID-SIZE  
BUSINESS DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

DEC 19 2007

Mr. K.R.L. Forman  
Administrator of Income Tax  
States of Guernsey Income Tax Office  
2 Cornet Street  
St. Peter Port  
Guernsey C.I. GY1 3AZ



Subject: TIEA Request Concerning

Dear Mr. Forman:

I would like to take this opportunity to express my gratitude to you and your staff for your efforts in obtaining the requested information under our Tax Information Exchange Agreement (TIEA). In particular, I would like to commend Messrs. Rob Gray and Richard Green for their tireless efforts in helping us obtain the required information on this first TIEA request.

Several highly productive discussions took place over the past few months. These discussions involved the administrative TIEA process, in general, and the specific request. We hope to continue this cooperative relationship in the future and look forward to continuing discussions once our new Tax Attaché, Ms. Kelli Winegardner, arrives in London in the earlier part of next year.

Thank you again for your assistance on this matter.

Sincerely,

Barry B. Shott  
Deputy Commissioner (International)  
Large and Mid-Size Business





# POLICY COUNCIL

## THE STATES OF GUERNSEY

### CHIEF MINISTER STATEMENT – STATES OF DELIBERATION JUNE 2011 MEETING

#### RE: CORPORATE TAX REVIEW.

##### Objectives and current status

The five key objectives of Guernsey's corporate tax review have remained unchanged since it was initiated 18 months ago: that is any regime for Guernsey must be competitive; internationally acceptable; sustain the economy; be simple and straightforward; and give rise to reciprocal benefits. These have remained constant despite the continuing uncertainty surrounding the EU Code of Conduct Group on Business Taxation ('Code Group') review process of the last 18 months.

Guernsey has always maintained that it will not undermine its economy, through either the timing or outcome of the review process, and thus cannot and will not determine its preferred direction of travel until the final outcome of the Code Group review is known. Formal and informal consultation, and technical and economic assessment, has been ongoing since October 2009. That there has been no definitive conclusion of our review process to date is as a result of the protracted nature of the Code Group review of the Jersey and the Isle of Man zero/10 regimes. Until proposed 'rollback' provisions of Jersey and the Isle of Man have been formally assessed by the Code Group, the final judgement on zero/10 remains an unknown.

##### Guernsey and the Code Group

In October 2009 it was communicated that several European Union Members States had issues with the zero/10 regimes as they stood. Guernsey's response was pragmatic, constructive and clear: namely to conduct our own review allowing all options to be considered. As a result Guernsey has been able to maintain a close dialogue with the Code Group: in June 2010 Guernsey politicians and officials were able to meet with the Chair of the Code Group and secure an early appreciation and understanding of the issues with the zero/10 regimes. An appreciation relayed to the other Crown Dependencies.

##### Feedback from Guernsey's consultation process

The feedback from our consultation process, undertaken during the summer of 2010, was clear: that a territorial regime could form the basis of a competitive alternative to a zero/10 regime, but that consideration should also be given to modifying the current regime to conform to the EU Code of Conduct on Business Taxation ('Code').

Importantly, that feedback also stated that it was paramount to ensure any revised corporate tax regime was internationally acceptable and sustainable economically and fiscally in the long run and to ensure that any changes made to the regime would 'future-proof' Guernsey against further pressure and subsequent rounds of changes. This would provide clarity and stability going forward and prevent any undermining in the confidence of business and investors in Guernsey long-term.

#### **The Code Group's current position**

It is now known is that the zero/10 regimes in Jersey and the Isle of Man have been judged harmful by the Code Group. The February 2011 judgement of the Code Group was endorsed by Ecofin in June 2011. What is also well known is that, in its assessment, the Code Group focussed on the discriminatory aspects of the treatment of shareholders of the regimes, but that does not preclude further issues. Both islands have proposed 'rollback' provisions, the Code Group actively deferring any assessment of those until Ecofin was given the opportunity to formally welcome the harmful judgement of the Code Group, as it has now done (June 20<sup>th</sup>, 2011).

#### **The UK position**

The UK has provided an opinion that, in *principle* and without the use of any other anti-avoidance measures that replicate the harmful effects, a zero/10 regime on its own could well be Code compliant. But this comes with the caveat that it is the view of other key Member States that will be key in the formal assessment of 'rollback'.

The UK has also separately stated that it would support the introduction of a territorial regime in the Crown Dependencies, as it has for Gibraltar: whose new territorial regime will be informally assessed by the Code Group in September.

#### **Guernsey's next steps**

Clearly the first three of the objectives of our review (competitive, internationally acceptable and sustain our economy) are key and are to a certain extent symbiotic. A competitive regime sustains the economy; an internationally acceptable regime sustains the economy. Sustaining our economy means ensuring that a regime provides a competitive platform for business but also generates sufficient taxation revenues for government. These are the factors to be taken into consideration when evaluating the best course of action for Guernsey. What also needs to be taken into consideration is the preference of industry for the regimes of the Channel Islands to be operated on the same basis, be it zero/10 or territorial.

Events over the course of the next few months will provide a greater degree of clarity of the views of the Code Group on both the zero/10 and the Gibraltar territorial regime for that evaluation to be properly undertaken. Until that clarity is obtained, any decision and accompanying publication of any Green Paper would be premature.

LS Trott  
Chief Minister, States of Guernsey  
29th June, 2011



**XXIX**  
**2009**

# **BILLET D'ÉTAT**

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**TUESDAY 27th OCTOBER 2009**

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POLICY COUNCIL – CORPORATE TAX RATES:  
PROPOSED REVIEW

Printed by Image Group, Caslon Court, Pitronnerie Road, St Peter Port, Guernsey GY1 3NE

Price £2.50



# ***B I L L E T D ' É T A T***

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## **TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY**

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I have the honour to inform you that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE**, on **TUESDAY, the 27<sup>th</sup> OCTOBER, 2009**, immediately before the meetings already convened for that day, to consider the item contained in this Billet d'État which has been submitted for debate.

**G. R. ROWLAND**  
Bailiff and Presiding Officer

The Royal Court House  
Guernsey  
23 October 2009

## **POLICY COUNCIL**

### **CORPORATE TAX RATES: PROPOSED REVIEW**

#### **1 Executive Summary**

1.1 The last 12 months have seen unprecedented global economic upheaval. There has been a massive shift in the political, regulatory and economic landscape. Tax issues have dominated policy debates throughout the year, particularly in light of the enormous current (and projected) fiscal deficits throughout the Western economies.

1.2 It is in that context that, during a recent series of meetings between representatives of the States of Guernsey and Her Majesty's Treasury ('HMT'), it was communicated to the Crown Dependencies ('CDs') that it was believed that the EU Code of Conduct Group ('CCG') now consider the Zero-10 corporate tax regimes of the CDs to be non compliant with the 'spirit' of the EU Code of Conduct for business taxation.

1.3 HMT also indicated that it therefore felt it would not achieve a successful outcome in supporting the CDs in respect of achieving a positive ruling from the CCG. To that event, HMT advised that its belief was that the CDs will need to review their general corporate tax rates with a view to not only technically comply with the EU Code of Conduct but also to achieve compliance with what certain Member States now consider to be the 'spirit' of the Code.

1.4 To achieve this objective a movement from a limited to a general corporate tax rate of 10% is likely to be required. It is therefore recommended to the States that the current planned review of taxation ('Fiscal and Economic Plan, Billet XVIII, July 2009) proceeds on the presumption of a 10% general rate of corporate tax. It is also intended that Guernsey work in full partnership with the other CDs in the development of this revised corporate tax regime.

#### **2 History**

2.1 Guernsey's Zero-10 corporate tax regime was introduced on 1 January 2008, with Jersey and the Isle of Man following a broadly similar approach (albeit with slight timing differences). Officials from the HMT had prior sight of the new regimes and confirmed to the CDs that in their view this approach was compliant with international standards and the EU Code of Conduct. Zero-10 has been discussed at the CCG on several occasions (as recently as Spring 2009) and previous indications from the CCG was that Zero-10 would be deemed compliant.

2.2 The Zero-10 corporate tax system was developed over many years with full and lengthy discussion with the public and all stakeholders. The original catalyst was a CCG review of tax regimes which identified five 'harmful tax regimes' in Guernsey.

This figure needs to be provided in the context that this review identified 66 harmful measures across the (then 15) EU member states and associated territories.

2.3 Given the unprecedented global economic turbulence over the last 12-18 months and the significant worsening of the fiscal position of many European countries, it is believed that it is now the situation that several EU Member States no longer consider a Zero-10 corporate tax regime to be compliant with the 'spirit' of the Code. This view of non-compliance with the spirit of the Code needs to be viewed in the wider context of the EU's political direction of travel. The EU has made clear its pejorative view of zero corporate rates systems which is evident in stage II of the European Union Savings Directive ('EUSD') which imposes a heavier burden of compliance for zero rate corporate tax systems.

2.4 The EU has also in recent years deliberately sought to extend its global sphere of influence through the imposition of regulatory, competition, safety and consumer standards. Over the most recent past the EU has become more confident and assertive in dealing with third party countries (ie non EU) states in a host of areas. There is an increasing tendency for the EU to require 'equivalence' for third party countries as a prerequisite for non-discriminatory access to the EU market.

### 3 Current situation

3.1 In order to maintain its position in the global economy, Guernsey must provide certainty for its investors and maintain the respect of the international community. It is also of fundamental importance that Guernsey ensures the outcome of the next stage of the corporate tax strategy be fully sustainable in the long term, and mitigate any negative economic effects on our economy.

3.2 With the current lack of support within the CCG it is clear that Zero-10 will not achieve Code compliance. It is clear that any alternative corporate tax arrangements will require UK support to achieve CCG compliance. It is therefore reasonable to conclude that these alternative arrangements ought to be developed and agreed as soon as is practicable and that as much certainty of support from the UK needs to be gained at as early a stage as possible. Whilst no clear direction at this stage has been provided by HMT, it is believed that a movement from a limited to general corporate tax rate of at least 10% is the likeliest route to achieve such support and success as 10% is the lowest general rate of corporate tax within the EU<sup>1</sup>.

3.3 It would therefore be appropriate to consider, consult and discuss these options at the earliest possible event. The current planned review of taxation ('Fiscal and Economic Plan, Billet XVIII, July 2009) is presently in its pre-consultation phase with work commenced by the Fiscal and Economic Policy Group and the Treasury and Resources Department. It is therefore a logical step to extend this work to include a review of the general corporate tax.

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<sup>1</sup> Portugal and Cyprus

#### **4 Future compliance negotiations**

4.1 Guernsey has engaged in dialogue with the other CDs, and there is acceptance across the board of the need for each jurisdiction to review how they conform to spirit of the Code. However, in addition to this acknowledgement, Guernsey, Jersey and the Isle of Man will use this opportunity to seek reasonable, practical and appropriate recognition of the steps they intend to take. These might include full double tax agreements with EU members, removal of discriminatory practices and easier access to EU markets.

#### **5 Partnership working**

5.1 It is intended to work in full consultation and partnership with other CDs by sharing technical expertise through a process of mutual assistance. The preferred outcome would be a common, harmonised approach to the maintenance of globally competitive tax systems, with the intention that there should be no significant differences between the corporate tax regimes of the islands.

#### **6 Process**

6.1 The pre-consultation preparatory work for the second phase of the Zero-10 review has already commenced. The review would be carried out, as initially planned, by the Fiscal and Economic Policy Group of the Policy Council, in conjunction with the Treasury and Resources Department. As is standard practice, there would be a full programme of consultation with all stakeholders and with the public.

#### **7 Timetable**

7.1 Given the issues outlined in section four above, it is important to bring forward proposals for a revision of the corporate tax system as soon as is practicable, certainly in providing a report to the States, after full consultation and discussion, as early as possible in 2010.

#### **8 Recommendation**

8.1 It is recommended that the current, planned review of taxation ('Fiscal and Economic Plan', Billet XVIII, July 2009) proceeds on the presumption of a 10% general rate of corporate tax.

L S Trott  
Chief Minister

19<sup>th</sup> October 2009

2502

(NB The Treasury and Resources Department strongly supports the proposal.)

The States are asked to decide:-

Whether, after consideration of the Report dated 19<sup>th</sup> October 2009, of the Policy Council, they are of the opinion:-

That the current, planned review of taxation ('Fiscal and Economic Plan', Billet XVIII, July 2009) shall proceed on the presumption of a 10% general rate of corporate tax.





# The Guernsey Economy & Fiscal Position



# A snapshot of GSY's economy

- Total GDP 2009: c.£1.9bn
  - Forecast growth 2010: Between 0 and 1 percent
- Guernsey measures GDP via 'income' approach on a consistent basis since 1965. This is not directly comparable to calculations following ESA methodology.*



- Average earnings median/mean: £27,400 / £34,000
- Average Household Income: £45,000
- Population: 62,431
- Historic average 10 year GDP growth: 2.2%
- Inflation (RPX): 2.9%
- Workforce: 32,190
- Unemployment: 1.3%

## **Diversified (and growing) finance sector**

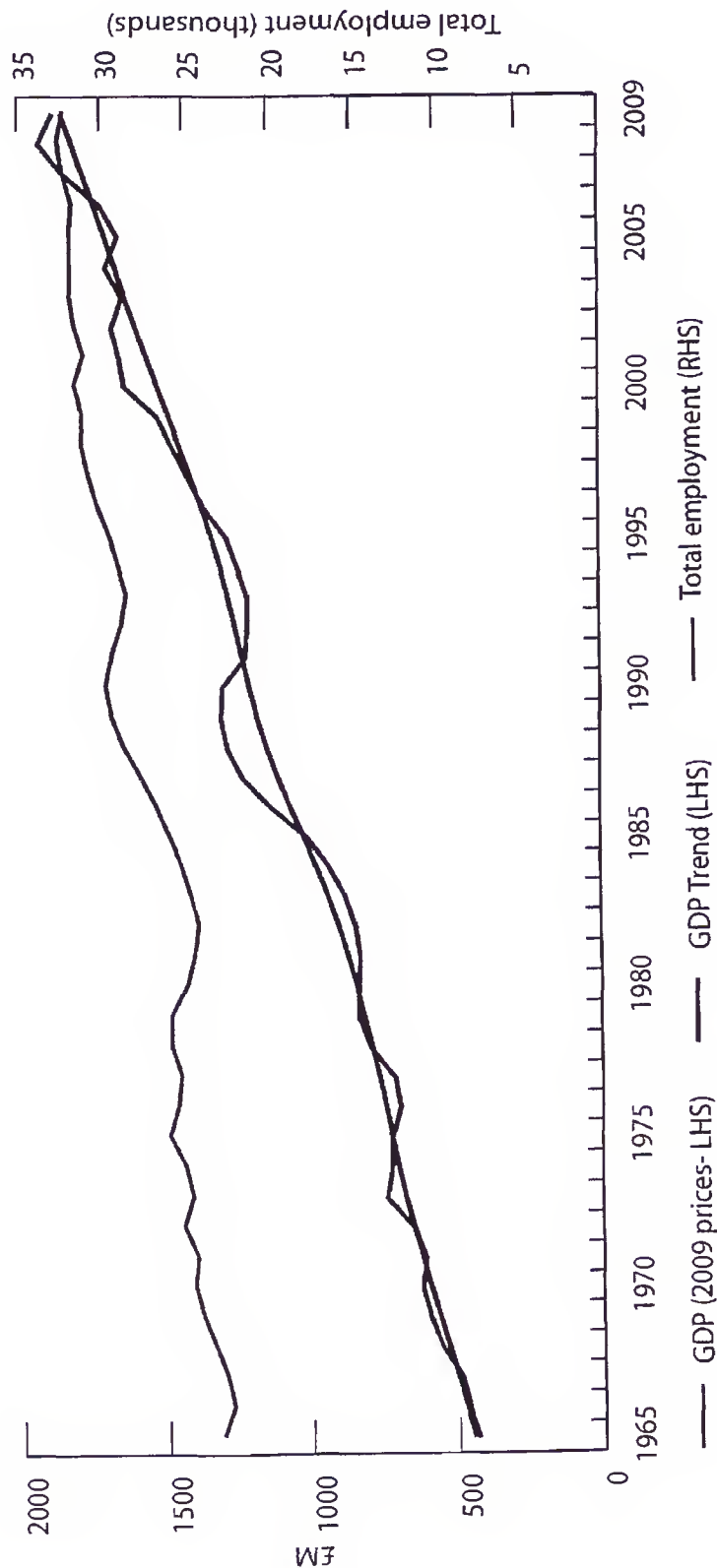
- Employs just under 7000
- Four pillars: banking fiduciary; funds; insurance (captives)
  - Europe's largest captive market
  - Leading offshore funds domicile > £250bn
  - #1 for private equity admin outsourcing
  - Market leader in innovation, PCCs & QROPs
  - £130bn in banking deposits
  - Channel Island Stock Exchange, 4000 + listings
- Respected, well regulated, tax transparent, jurisdiction
  - IMF assessment - highest FSAP compliance globally
  - Global Forum Report - meeting global transparency standards
  - OECD white list
  - Category 1, HMT listing



**POLICY COUNCIL**  
THE STATES OF GUERNSEY

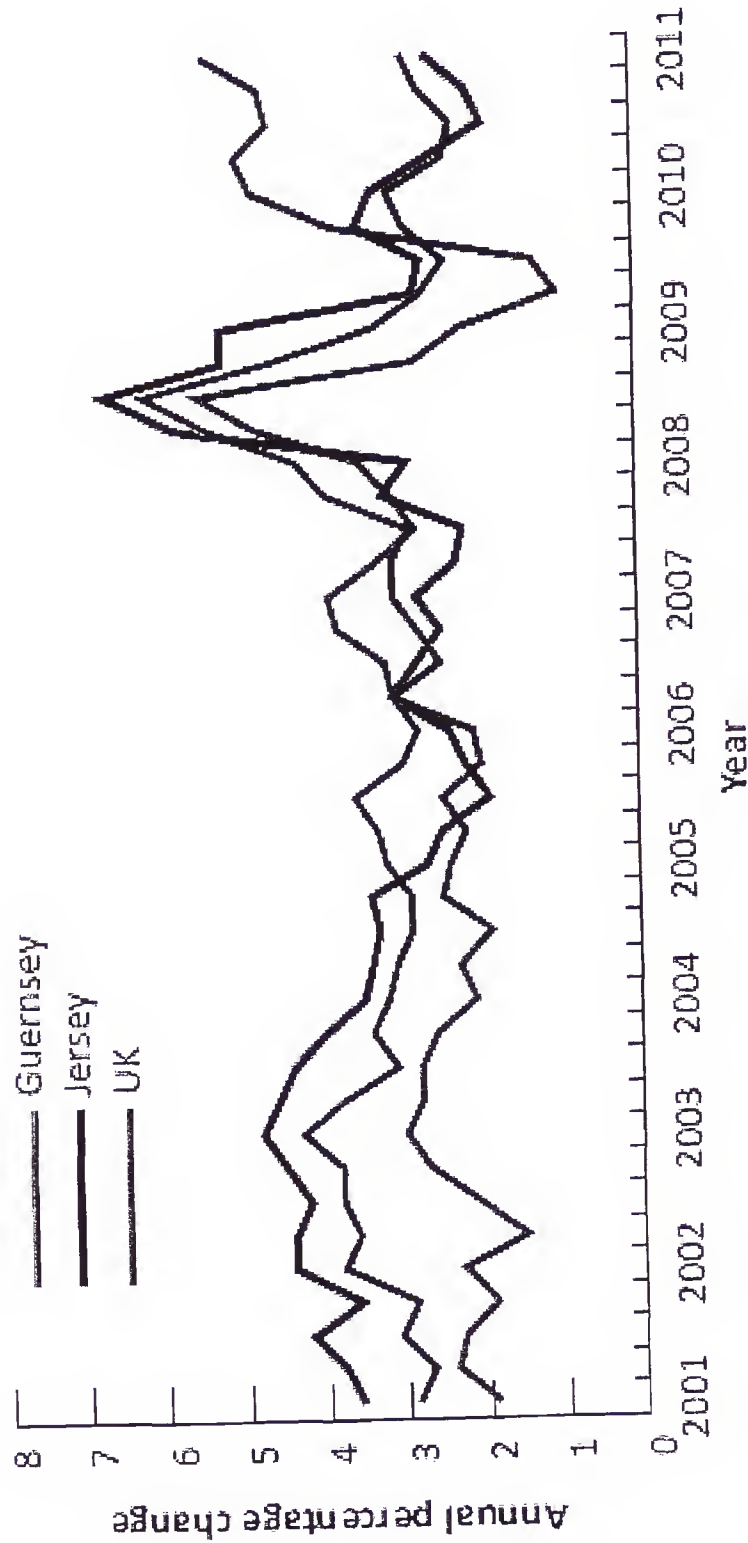
# GSY economy

## Long run level of GDP and employment



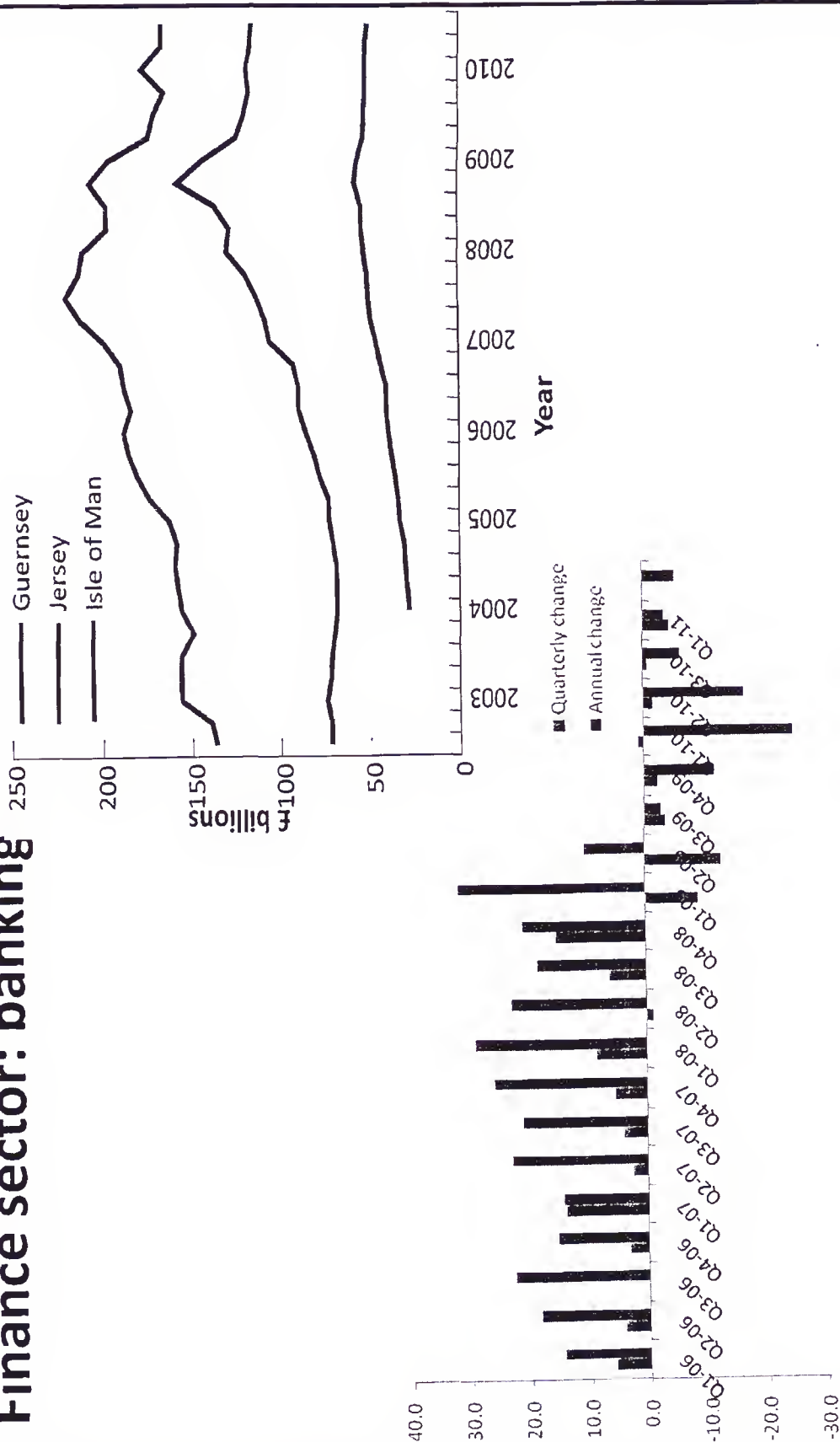
# GSY Economy

## Inflation (RPIX) ten year growth history



# The recent 'cycle'

## Finance sector: banking

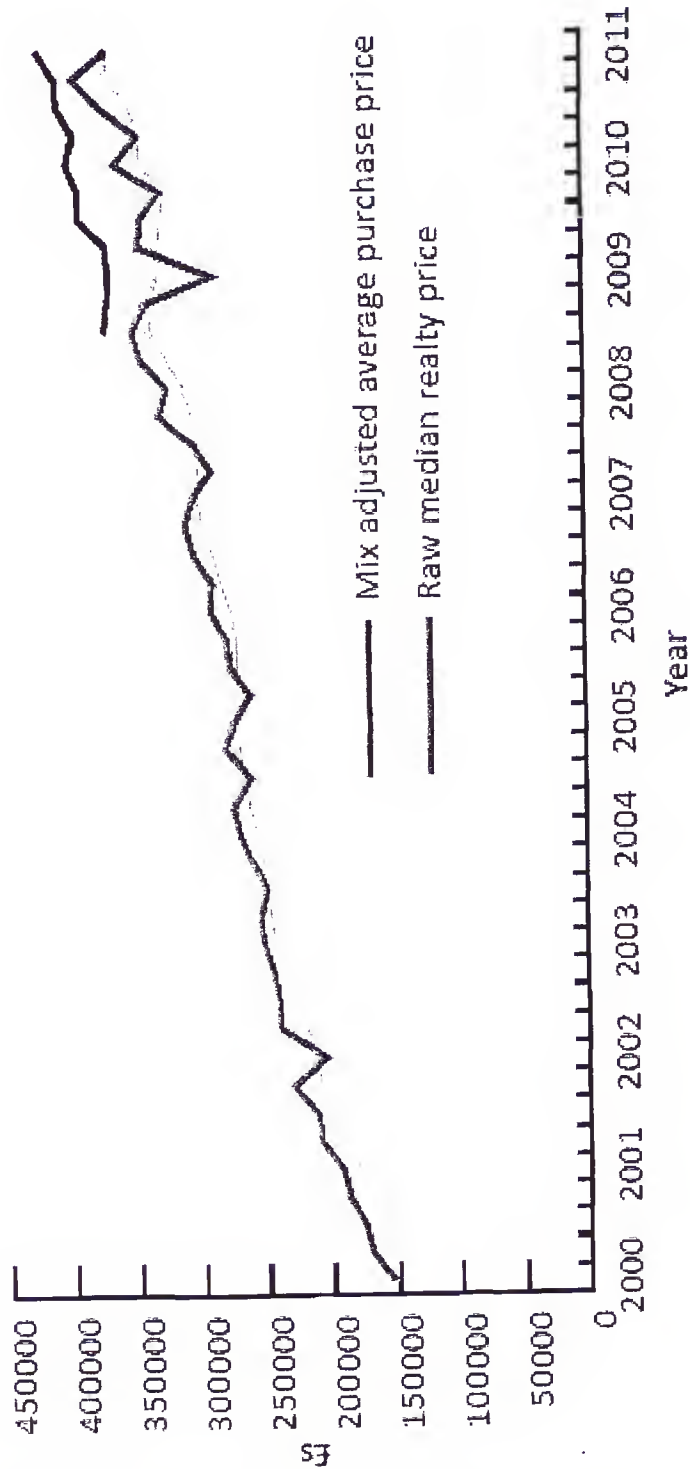




# The recent 'cycle'

## Local Property market

Prices

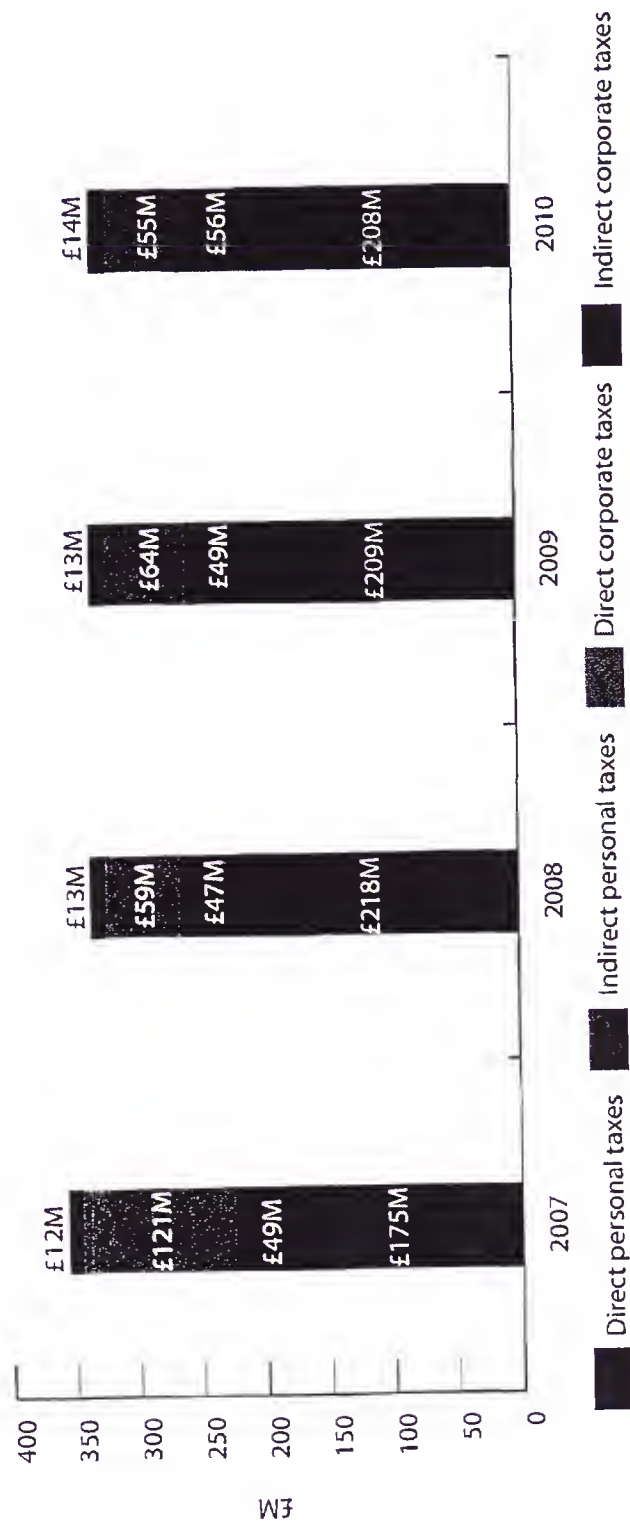


## **Economic summary**

- ‘Mild’ recent downturn
  - One year of negative growth
- Weak but fairly entrenched recovery
  - Policy Council estimate that resumption of growth around Q2/Q3 2010
  - Business confident about 2011 and medium term (Chamber annual business survey)
- Current outlook fair
  - increased activity in finance sector: funds; insurance; banking
  - Local property market robust
  - Falling unemployment / rising employment (near all time highs)
- Continuing tax and global regulatory uncertainty

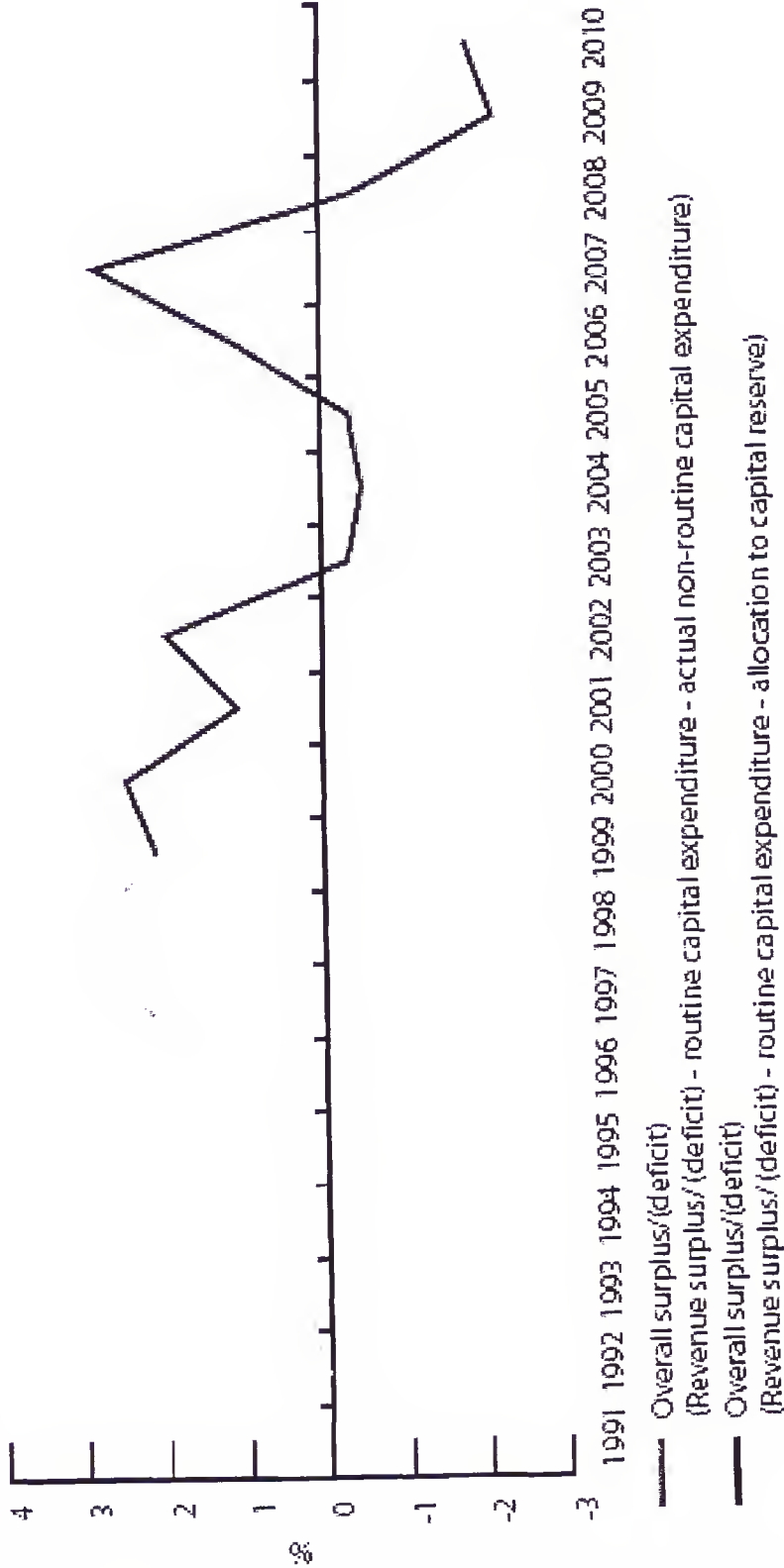
## Composition of States Revenues

- Post zero/10 split between direct and indirect taxation has remained fairly static with 80% of tax revenue derived from direct taxation.
- However the distribution of direct taxation between personal and corporate tax has changed.
- No GST / VAT



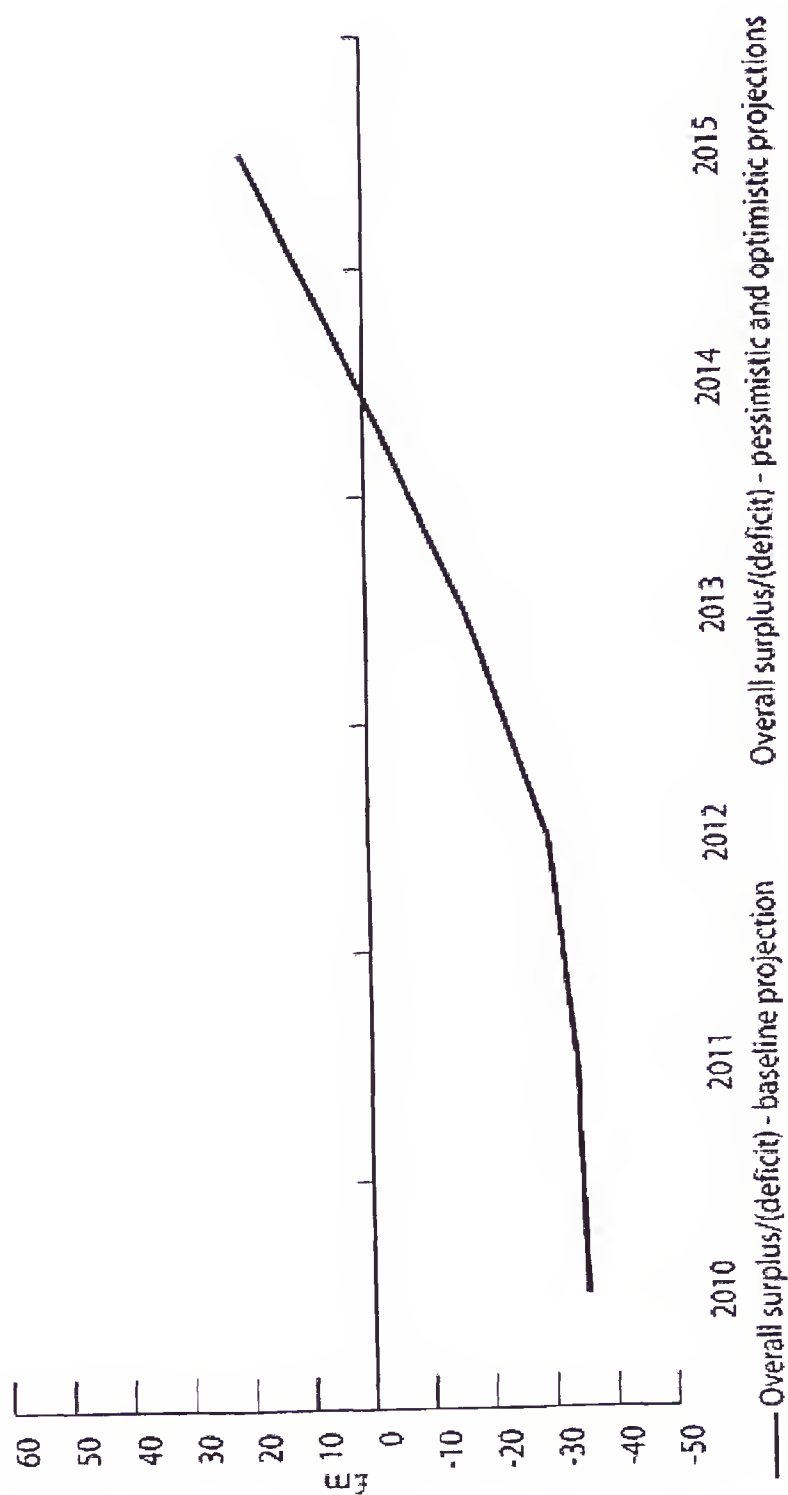
## Fiscal trends

### Overall balance (percent GDP)



# States' fiscal strategy

## Projected Fiscal Position to 2015 (2010 prices, fm)



## Summary

- Strong fiscal position, healthy reserves
- Mild fiscal imbalance
  - 2% of GDP
  - driven by cycle and tax changes
- Planned 'adjustment' through freezing real term expenditures and restoration of cyclical position

Contact: Dr Andy Sloan, States Economist  
[andrew.sloan@gov.gg](mailto:andrew.sloan@gov.gg)  
44 (0) 1481 717 296



**POLICY COUNCIL**  
THE STATES OF GUERNSEY



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**States of Guernsey**  
**Statement for the Hearing Record**  
**House Ways and Means Subcommittee on Select Revenue Measures**  
**“Banking Secrecy Practices and Wealthy American Taxpayers”**  
**March 31, 2009**

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STATES OF GUERNSEY

## Statement

- 1.1 Guernsey is a well-regulated financial centre committed to maintaining international financial stability and transparency. Guernsey has consistently demonstrated this commitment through international co-operation and information exchange.
- 1.2 As a general principle, Guernsey does not support the use of "blacklists" and endorses the views of the U.S. Department of the Treasury that the use of such lists "to simplify what is a complex area...can lead to misunderstanding and mistakes."<sup>1</sup> Guernsey has consistently argued that each jurisdiction should be considered on its own merits as assessed against internationally recognised standards. Guernsey is not a "tax haven" or an "offshore secrecy jurisdiction." In any event, there is no internationally agreed definition of either.
- 1.3 By any objective measure, Guernsey is not a "tax haven" or an "offshore secrecy jurisdiction" for the following reasons:
- Guernsey has never had any form of banking secrecy legislation;
  - Guernsey has entered into 13 Tax Information Exchange Agreements ("TIEAs") so far, including one with the United States, and is committed to continuing to be a leader in this field;
  - Guernsey has well-developed powers to investigate financial crime and tax evasion and regularly assists other jurisdictions in such investigations;
  - Guernsey has had mutual legal assistance legislation in force since 1998 and regularly exchanges information under that legislation;
  - Guernsey provides assistance to jurisdictions so that requests for information comply with Guernsey law and does not attempt to obstruct investigations; and
  - Guernsey has a well-developed regulatory regime which complies with all recognised international standards.
- 1.4 Guernsey is a participant in the Global Tax Forum, an initiative of the Organisation for Economic Co-operation and Development (the "OECD"). The OECD recognises that Guernsey has substantially implemented the OECD standard on information exchange in tax matters by entering into 13 TIEAs. Further agreements are under negotiation and Guernsey intends to continue to conclude such agreements in the near future. The OECD published a list of co-operative jurisdictions on 2 April 2009, which places Guernsey alongside jurisdictions such as the United States, France, Germany, and the United Kingdom in having effective tax information exchange.<sup>2</sup> Guernsey is delivering on its international commitments to transparency and co-operation.

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<sup>1</sup> Letter from Deputy Assistant Treasury Secretary (International Tax Affairs) Michael Mundaca to General Accountability Office ("GAO") Director (Tax Issues) James R. White, commenting on GAO report: *Large U.S. Corporations and Federal Contractors with Subsidiaries in Jurisdictions Listed as Tax Havens or Financial Privacy Jurisdictions*, December 18, 2008.

<sup>2</sup> This list is posted at: [www.oecd.org/document/57/0,3343,en\\_2649\\_34487\\_42496569\\_1\\_1\\_1\\_1.00.html](http://www.oecd.org/document/57/0,3343,en_2649_34487_42496569_1_1_1_1.00.html).



STATES OF GUERNSEY

- 1.5 In the event that the Subcommittee on Select Revenue Measures decides to develop anti-tax haven abuse legislation that uses a list of "tax havens" or "offshore secrecy jurisdictions," then Guernsey respectfully suggests that the only appropriate list to follow is the list most recently issued by the OECD, the leading global authority on international tax practices, of jurisdictions that have not substantially implemented the OECD standard for effective exchange of tax information.
- 1.6 Guernsey's reputation as a premier provider of international financial services has been built on a number of foundations, including:
- an effective regulatory regime that meets or exceeds all international standards on financial regulation, anti-money laundering and combating the financing of terrorism;
  - international co-operation on regulation and the investigation of financial crime;
  - regular, external, and independent reviews - in the majority of cases at Guernsey's express invitation and in all cases with Guernsey's full co-operation and assistance;
  - a highly skilled and educated workforce; and
  - proximity to the European mainland.
- 1.7 The authorities in Guernsey have substantial investigatory powers. They work closely with their counterparts in other jurisdictions in investigating regulatory, taxation, and criminal matters and assisting in freezing and recovering the proceeds of crime. Guernsey has consistently provided assistance to the United States in investigating crime, freezing assets, and recovering the proceeds of crime.

**Lyndon S. Trott**  
**Chief Minister**  
**States of Guernsey**

**14 April 2009**

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STATES OF GUERNSEY

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## **Background Information**

### **A. Guernsey's Status and International Relationships**

#### **1. The Government of Guernsey**

- 1.1 Guernsey is the principal island of the Bailiwick of Guernsey, a British Crown Dependency.<sup>3</sup> It has never been a colony or a British dependent or overseas territory. Its status constitutionally is, and always has been, distinctly different from that of the British Overseas Territories. Guernsey has its own directly-elected legislative assembly, the States of Deliberation, comprising 47 independent members, and its own administrative, fiscal and legal systems. Its government, the States of Guernsey, is principally conducted through 10 Government Departments overseen by the Policy Council, constituted by the Chief Minister and the 10 Ministers. Guernsey's right to raise its own taxes is a long-established constitutional principle.

#### **2. Guernsey's Relationship with the United Kingdom**

- 2.1 Guernsey is not, and never has been, represented in the UK Parliament, which therefore does not legislate on behalf of Guernsey without first obtaining the consent of Guernsey's administration. The extension to Guernsey of an Act of Parliament by Order in Council is occasionally requested. However, the usual practice is for the States of Deliberation, which always has been legislatively independent from the United Kingdom regarding insular affairs, to enact its own legislation. Primary legislation ("Laws") requires Royal Sanction from Her Majesty in Council ("the Privy Council").
- 2.2 The British Crown acts on behalf of Guernsey through the Privy Council on the recommendations of Ministers of the UK Government in their capacity as Privy Counsellors. For example, the UK Ministry of Justice acts as the point of contact between Guernsey and the British Crown for the purpose of obtaining Royal Sanction for Laws, but is not otherwise involved in Guernsey's internal affairs. The Judicial Committee of the Privy Council is Guernsey's final appellate court.

#### **3. Guernsey's International Affairs**

- 3.1 The United Kingdom is responsible for Guernsey's external relations and defence. In recent years, Guernsey has increasingly acted internationally on its own behalf, particularly in relation to matters

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<sup>3</sup> This section is drawn from Ogier, D, *The Government and the Law of Guernsey*, 2005. Further information on Guernsey is available at: [www.gov.gg/aboutguernsey](http://www.gov.gg/aboutguernsey).



for which it has complete autonomy.<sup>4</sup> The UK Government has recognised the appropriateness of Guernsey further developing its international identity.

## **B. Guernsey's Taxation System**

- 1.1 Guernsey has a well-developed taxation system. Taxes in Guernsey are set on the basis of the need to fund public services and the need to ensure that Guernsey's economy remains strong. Taxation in Guernsey is managed by the Director of Income Tax who is responsible for administering legislation relating to Income Tax and Foreign Retention Tax in support of the European Union ("EU") Directive on the Taxation of Savings Income (2003/48/EC). There is no capital gains or any other taxes on capital in Guernsey. Guernsey's personal income tax is set at 20 percent, a rate which has remained unchanged for over 40 years. Guernsey does not have a Value Added Tax but does have a range of indirect taxes and duties. As part of its commitment to eliminating harmful tax competition, Guernsey has complied fully with the EU Code of Conduct on Business Taxation. Guernsey's tax system is relatively uncomplicated and effective, which minimises the compliance costs on business.

## **C. Guernsey's Economy and the Financial Services Sector**

### **1. Development of the Finance Sector**

- 1.1 Guernsey's financial services sector began to grow in the 1960s with the establishment of operations in Guernsey by UK merchant banks and the establishment of investment funds which they sponsored. By 1987, the banking, insurance and collective investment fund sectors had developed to such an extent that the States of Guernsey acted to establish an independent regulatory body staffed by dedicated professionals. This was in accordance with internationally accepted best practices at the time. The Guernsey Financial Services Commission (the "Commission") was established in 1988. During the 1990s, Guernsey emerged as one of the world's largest captive insurance centres. Today, Guernsey is Europe's largest captive insurance centre, and the fifth largest in the world. The Channel Islands Stock Exchange ("CISX"), which is based in Guernsey and is the only stock exchange in the Channel Islands, commenced operations in 1998. The CISX has been recognised by the U.S. Securities and Exchange Commission, the Financial Services Authority ("FSA") and Her Majesty's Revenue and Customs ("HMRC"). As the sector continues to develop, an increasing number of professional firms exist to service the finance industry, particularly in the accounting, legal and actuarial professions. There are presently more than 8,000 people employed in financial services in Guernsey.

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<sup>4</sup> For example, co-operation agreements with the 27 EU Member States (in relation to Directive 2003/48/EC on taxation of savings income) and agreements for the exchange of information relating to tax matters.

- 1.2 Financial services account for approximately 35 percent of Guernsey's Gross Domestic Product. Guernsey also has well-developed industries in business services, electronic commerce, information technology and light manufacturing.
- 1.3 Guernsey's financial services industry is diverse and includes banking, collective investment funds, insurance and fiduciary services. The workforce in Guernsey is highly skilled and provides a full range of services, including administration of funds, corporate administration, public listing of companies on European stock exchanges, investment advice, and insurance brokerage services. In many respects, Guernsey's success as a financial service centre exists because many of Guernsey's professionals are recognised as world leaders in their particular fields with a high level of skills and expertise.
- 1.4 Due to its long-established financial services industry, Guernsey has developed considerable expertise in administering collective investment funds, captive insurance, and trust and company structures. In addition, Guernsey operates a "full-service" finance centre. It does not merely provide a domicile for activities undertaken elsewhere.
- 1.5 Guernsey has been ranked 12<sup>th</sup> in the latest Global Financial Centres Index ("GFCI"), released in March 2009. Since the previous survey published in September 2008 the Island has moved up four places. The report is produced by the Z/Yen Group for the City of London and ranks financial centres based on external benchmarking data and current perceptions of competitiveness and resilience in the face of the global financial downturn.

## **2. Regulation of Financial Services in Guernsey**

- 2.1 The Commission was one of the world's first unitary regulatory bodies, and is responsible for the regulation of banks, insurers and insurance intermediaries, investment firms, trust companies, company administrators and professional company directors providing directorship services by way of business in Guernsey. It has been given wide-ranging powers to supervise and investigate regulated entities under a variety of regulatory laws. It also takes appropriate enforcement action when necessary. The Commission considers that the prevention of financial instability is a key function of effective regulation.
- 2.2 Guernsey is one of the few jurisdictions in the world to regulate trust and company service providers in a manner consistent with the prudential regulation of banks, investment firms and insurance companies. It has regulated trust and company service providers in this way since 2001.
- 2.3 In performing its regulatory and supervisory work according to international standards, the Laws and Regulations administered by the Commission comply with those established by:
  - The Basel Committee on Banking Supervision;
  - The International Association of Insurance Supervisors ("IAIS");
  - The International Organization of Securities Commissions ("IOSCO");
  - The Offshore Group of Insurance Supervisors ("OGIS");

- The Offshore Group of Banking Supervisors (“OGBS”); and
- The Financial Action Task Force (“FATF”).

- 2.4 The International Monetary Fund (“IMF”) conducts a regular independent and external review of Guernsey’s compliance with those international standards. The next IMF review is likely to occur later this year.
- 2.5 The Commission is actively involved with international regulatory and supervisory organisations. Guernsey was a founding member of IAIS, OGIS, and OGBS. The Commission is also a full member of IOSCO and a member of the enlarged contact group on the Supervision of Collective Investment Funds.

#### **D. Co-operation on Taxation, Regulation, Financial Intelligence and Anti-Money Laundering**

##### **1. Information Exchange**

- 1.1 On 21 February 2002, Guernsey publicly committed to complying with the OECD’s principles of effective exchange of tax information.<sup>5</sup> Guernsey signed its first TIEA, with the United States, on 19 September 2002. It has been fully operative since 2006. Guernsey has subsequently concluded TIEAs with the Netherlands (25 April 2008), the seven Nordic Council countries (Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway and Sweden ) (28 October 2008), the United Kingdom (20 January 2009), France (24 March 2009), Germany (26 March 2009) and Ireland (26 March 2009). Guernsey is actively pursuing TIEA negotiations with other countries with a view to finalising agreements as soon as practicable.
- 1.2 Guernsey’s commitment to transparency and international co-operation has been recognised by the OECD and the European Commission. The OECD published a progress report listing co-operative jurisdictions on 2 April 2009, which places Guernsey alongside jurisdictions such as the United States, France, Germany, and the United Kingdom in having effective tax information exchange. At a press conference held on 7 April 2009 the OECD recognised:
- “Guernsey...[has] made a real commitment, not just before the G20, but years ago and they have implemented those commitments.”
- 1.3 Guernsey currently has two double tax arrangements, one with the United Kingdom, signed in 1952, and the other with Jersey, signed in 1955. The agreements provide for the exchange of information in order to prevent fiscal evasion or avoidance. For many years, Guernsey has been able to provide information from its tax files to the UK tax authorities, and has done so on a regular basis, both spontaneously and as requested by the United Kingdom. Exchange of information under the double

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<sup>5</sup> See letter at [www.oecd.org/dataoecd/61/13/2067884.pdf](http://www.oecd.org/dataoecd/61/13/2067884.pdf).



tax arrangement with the United Kingdom has led to the opening of investigations or advancement of existing investigations by HMRC.

## **2. Mutual Legal Assistance**

- 2.1 The European Convention on Mutual Legal Assistance (1959) and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (1990) have both been extended to Guernsey.
- 2.2 Mutual legal assistance is provided by the Law Officers of the British Crown under a range of Guernsey Laws. Between 1999 and 2007, over 90 requests for information specifically related to taxation matters were received, of which 46 were from the United Kingdom, 28 from other EU Member States, 7 from the United States and 9 from other foreign jurisdictions. In 2008, there were 34 requests of all types. Guernsey does not approach requests to see if they can be rejected but rather offers assistance to other jurisdictions to enable them to perfect their requests so they comply with the form required by the relevant Guernsey Laws.

## **3. Banking Secrecy and Transparency**

- 3.1 Guernsey has never had banking secrecy laws and does not perpetuate a regime of banking secrecy. As in the United Kingdom, general principles of Guernsey law preserve the confidentiality of information properly regarded as private. Against such due respect for privacy, however, must be balanced compliance with domestic law provisions requiring persons to divulge information to relevant authorities (*e.g.*, the Director of Income Tax has extensive information-gathering powers and the Commission has wide-ranging powers of supervision and investigation).<sup>6</sup> Relevant authorities in Guernsey then share appropriate information with partners internationally.
- 3.2 Guernsey's company law has introduced a new requirement that all private companies in Guernsey appoint a local resident agent who is under an ongoing duty to identify the beneficial owner of that company. That information must be made available to law enforcement and regulatory bodies upon request. Guernsey believes that it is the first jurisdiction in the world to introduce such a regime. This further strengthens the pre-existing Anti-Money Laundering and Combating the Financing of Terrorism ("AML/CFT") regime which requires corporate service providers to identify the beneficial owner of the companies they administer as part of the anti-money laundering regime.
- 3.3 Guernsey has a long-standing commitment to transparency and international co-operation. This was recognised by U.S. Treasury Secretary Paul O'Neill at the signing of the TIEA between Guernsey and the United States in 2002. Treasury Secretary O'Neill said:

The United States and Guernsey already have a close and cooperative relationship on law enforcement matters, including criminal tax matters. We

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<sup>6</sup> See Income Tax (Guernsey) Law, 1975, Part VIA (inserted by the Income Tax (Guernsey) (Amendment) Law, 2005).

are well aware of Guernsey's commitment to cooperation in targeting criminal abuse of the world's financial systems.

This new agreement will formalize and streamline our current cooperation in criminal tax matters and will allow exchange of information on specific request in civil tax matters as well. This agreement is an important development, and further demonstrates Guernsey's long standing commitment to cooperating with the United States on law enforcement matters and to upholding international standards in this area.

Today's agreement with an important financial centre of Europe demonstrates our commitment to securing the cooperation of all our neighbours, not just those near our shores but those more distant too. I hope that Guernsey's cooperation with the United States in negotiating this tax information exchange agreement will serve as an example to other financial centres in its region and around the world.

#### **4. Regulatory Transparency and Information Exchange**

- 4.1 The Commission has the legal authority to disclose information to other supervisory authorities. It can also disclose information to other authorities for the purposes of preventing, detecting, investigating and prosecuting financial crime. In addition, the Commission may obtain information from licensees on behalf of foreign supervisory bodies. The Commission shares information with supervisory authorities and other bodies spontaneously, as well as on request. Although it has 15 Memoranda of Understanding ("MoUs") with international partners (including the U.S. Commodity Futures Trading Commission, U.S. Federal Deposit Insurance Corporation and the FSA), an MoU is not required to allow information exchange. In light of the links between UK financial services businesses and Guernsey, it is common for the Commission to co-operate and exchange information with the FSA.
- 4.2 Regarding transparency of transactions, the AML/CFT legislation and rules made by the Commission require financial services businesses to undertake customer due diligence on their potential customers and to look through legal persons, such as companies, legal arrangements and trusts to undertake customer due diligence on beneficial owners, settlors, beneficiaries and other underlying principals, and to maintain both customer due diligence and transaction records. In addition, rules made under the Protection of Investors Law require investor transaction records to be maintained (for example, contract notes). The Attorney General (HM Procureur) and the Commission have powers under the legislation they administer to obtain that information on behalf of foreign authorities and to disclose it to those authorities.

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STATES OF GUERNSEY

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## 5. Guernsey's Financial Intelligence Service

5.1 The Financial Intelligence Service ("FIS") is responsible for the collation and dissemination of intelligence relating to financial crime in Guernsey.<sup>7</sup> Formed in 2001, the FIS is operationally independent, although it is staffed and funded by the law enforcement agencies of the Guernsey Police and the Customs and Excise, Immigration and Nationality Service ("Customs"). The strategic aims of the FIS are:

- The provision of quality intelligence with regard to all financial crime, with a special emphasis on combating money laundering and countering the financing of terrorism;
- The provision of full international co-operation, within the law, to competent and relevant overseas authorities; and
- The provision of services to enhance the co-ordination and the development of criminal intelligence to combat financial crime.

5.2 The staff of law enforcement (the FIS, the Fraud and International Team, and the Commercial Fraud and International Affairs Team) are highly skilled specialists and experienced in the investigation of financial crime. The FIS also is the point of contact for those seeking assistance in relation to financial crime and receives requests for assistance from both local law enforcement and overseas agencies. Since 1997, Guernsey's law enforcement team has been a member of the Egmont Group of Financial Intelligence Units. Where the FIS receives intelligence enquiries of a criminal nature that are proportionate and justified, the FIS does not require an MoU in order to exchange information. However, where an authority in another jurisdiction does require an MoU to allow information exchange, the FIS will enter into such an agreement if there is an operational need. At present, the FIS is party to 13 MoUs with international partners, including the UK Serious Organised Crime Agency ("SOCA").

5.3 The FIS is the designated authority to receive suspicious transaction reports ("STRs") in Guernsey. The FIS investigates all STRs with most being disseminated to relevant local and overseas agencies. In 2008, there were 519 disclosures and 465 requests for assistance received, of which 63 percent came from outside Guernsey. STRs largely relate to suspicions of tax evasion, large cash transactions, and unexplained lifestyles. STRs relating to suspected terrorism are relatively rare and comprise only a small portion of reports received. The high number of reports demonstrates the high level of awareness of AML/CFT obligations in the finance industry in Guernsey. Over 75 percent of STRs do not relate to local Guernsey residents. Where there is evidence of tax evasion, it is Guernsey policy to disseminate all STRs to the appropriate jurisdiction as it would any other STR relating to any other criminal activity. Recent legislation allows intelligence to be disseminated to the SOCA to assist civil investigations in the United Kingdom (and elsewhere). The FIS also regularly provides STRs to EU Member States and OECD countries.

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<sup>7</sup> See the FIS website available at: [www.guernseyfis.org](http://www.guernseyfis.org). Also available at that website are the FIS annual reports which provide data on the FIS' activities in each year.

- 5.4 To counter the significant threat posed by sophisticated international money laundering, Guernsey has introduced new legislation to give law enforcement even greater powers to freeze and recover the proceeds of crime through both criminal and civil action. The laws also make it easier for law enforcement to prosecute money laundering offences. Guernsey regularly assists other jurisdictions that request assistance in obtaining evidence, tracing and freezing assets, and recovering assets related to criminal proceedings. Guernsey has had considerable success in freezing and recovering assets on behalf of many other jurisdictions, including the United Kingdom<sup>8</sup>, other EU Member States<sup>9</sup> and the United States. In many cases, substantial sums were involved and repatriated to the requesting nation. A significant portion of matters in which Guernsey provides assistance relate to taxation.

## **6. AML/CFT Framework**

- 6.1 Guernsey's AML/CFT regime complies with the FATF standards. The Guernsey authorities are committed to ensuring that money launderers, terrorists, those financing terrorism and other criminals, including those seeking to evade tax, cannot launder those criminal proceeds through Guernsey, or otherwise abuse Guernsey's finance sector. The AML/CFT authorities in Guernsey endorse the FATF's 40 Recommendations on Money Laundering and the FATF's Nine Special Recommendations on Terrorist Financing. Guernsey has introduced new legislation, amended existing legislation, and the Commission has introduced rules and guidance in order to continually keep compliant with the FATF's developing standards.
- 6.2 All businesses and individuals are required by the AML/CFT legislation to report possible money laundering when they suspect or have reasonable grounds to suspect that funds are the proceeds of criminal activity. This includes tax evasion. The same obligation to report suspicion applies to assets where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism. Businesses and individuals reporting suspicion are protected by law from any breach of confidentiality.
- 6.3 Extensive AML/CFT countermeasures apply to all financial service businesses operating in Guernsey, plus trust and company service providers, all of which are subject to regular on-site inspections by the Commission. The international standards set by the FATF did not apply to trust and company service providers until June 2003. However, the revised AML/CFT framework that entered into force in Guernsey on 1 January 2000 subjected trust and company service providers to AML/CFT regulation well before the FATF requirements. As a result, since 2000 trust and company service providers have been required to identify the beneficial owners of companies, the identity of settlors and beneficiaries of trusts and the identity of any other underlying principals.

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<sup>8</sup> The number of requests from the United Kingdom amount to 49% of the total number requests for assistance.

<sup>9</sup> The number of requests from other EU Member States amount to 30% of the total number of requests for assistance.

## **7. Stolen Asset Recovery Initiative**

- 7.1 In March 2008, the World Bank and the United Nations Office on Drugs and Crime invited Guernsey to participate in the Stolen Asset Recovery Initiative ("StAR Initiative"), a project endorsed at the G20 meeting in Washington in November 2008. The StAR Initiative is an integral part of the World Bank's anti-corruption strategy and will enhance co-operation, build relationships and help developing countries recover stolen assets. Guernsey has a continuing involvement in the project and has been asked, and agreed, to participate in two further projects under this initiative.



STATES OF GUERNSEY

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